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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

BEFORE THE
FEDERAL MARITIME COMMISSION

R. O. WHITE & COMPANY, INC.,)
CERES MARINE TERMINALS, INC.,)

Complainants,)

versus)

DOCKET NO. 06-11

PORT OF MIAMI TERMINAL OPERATING)
COMPANY, L.L.C.,)
CONTINENTAL STEVEDORING &)
TERMINALS, INC.,)
FLORIDA STEVEDORING, INC.,)
P&O PORTS NORTH AMERICA, INC.,)
P&O PORTS FLORIDA, INC.,)
ELLER-ITO STEVEDORING COMPANY)
L.L.C.,)
DANTE B. FASCELL PORT OF MIAMI -)
DADE, aka MIAMI-DADE COUNTY)
SEAPORT DEPARTMENT,)
MIAMI-DADE COUNTY)

Respondents.)



FIRST AMENDED COMPLAINT

1. This complaint is filed pursuant to section 11 of the Shipping Act of 1984, as amended ("the Act"), 46 U.S.C. §41301.¹ It alleges numerous Shipping Act violations by respondents, individually and/or collectively, including, *inter alia*, that the Port of Miami Terminal Operating Company, L.L.C. ("POMTOC") has been operating unlawfully under agreements that should have been, but were not, filed with the Federal Maritime Commission

¹ This complaint includes for convenience citations to the provisions of the Shipping Act of 1984, which was repealed and codified by Pub. Law. No. 109-304, 120 Stat. 1485 (2006). The corresponding new provisions of the U.S. Code are also cited. Citations to a Shipping Act section should be understood to include reference to the corresponding U.S. Code section(s).

and that POMTOC is unlawfully being used as a device for denying complainant R.O. White & Company, Inc. the ability to perform stevedoring services for vessels using the POMTOC terminal. The complaint seeks both reparations and orders directing respondents to comply with the requirements of the Act and Federal Maritime Commission ("FMC" or "Commission") regulations in connection with the matters described below.

PARTIES

2. The complainants are:

a. R. O. White & Company, Inc., 2550 Eisenhower Blvd., Suite 308, Fort Lauderdale, FL 33316 ("R.O. White"). R.O. White holds a permit issued by the respondent Miami-Dade County Seaport Department ("the Port" or "Port of Miami") authorizing it to perform stevedoring services at the Port, and has entered into a lease with the Port for office space and for an area to store its stevedoring equipment.

b. Ceres Marine Terminals, Inc., 1200 Harbor Blvd., 8th Floor, Weehawken, NJ 07087 ("Ceres"). Ceres and its corporate affiliates perform stevedoring and/or marine terminal services at numerous ports in the United States and Canada.

3. R.O. White is a wholly owned subsidiary of Ceres. Ceres is ultimately wholly owned by the ocean common carrier Nippon Yusen Kaisha of Japan, which is a member of vessel sharing agreements that call the Port and also calls the Port with vessels in its individual services.

4. The respondents are:

a. Port of Miami Terminal Operating Company, L.L.C., 1007 N. America Way, Suite 400, Miami, FL 33132 ("POMTOC").

b. Continental Stevedoring & Terminals, Inc., 701 S.E. 24th Street, Fort Lauderdale, FL 33136 (“Continental Stevedoring”), in its individual capacity and in its capacities as a member of POMTOC, a party to FMC Agreement No. 224-200616, and a member of Eller-ITO Stevedoring Company, L.L.C.

c. Florida Stevedoring, Inc., 125 N.E. 9th Street, Miami, FL 33101 (“Florida Stevedoring”), in its individual capacity and in its capacities as a member of POMTOC and a party to FMC Agreement No. 224-200616.

d. P&O Ports North America, Inc., 99 Wood Avenue South, 8th Floor, Iselin, NJ 08830 and P&O Ports Florida, Inc., 1007 N. America Way, Suite 310, Miami, FL 33132 (individually and jointly “P&O Ports”), in their individual capacities and in their capacities as members of POMTOC, parties to FMC Agreement No. 224-200616, and members of Eller-ITO.

e. Eller-ITO Stevedoring Company, L.L.C. (“Eller-ITO”), 899 S. America Way, Miami, FL, 33132.

f. Dante B. Fascell Port of Miami–Dade *aka* Miami-Dade County Seaport Department, 1015 N. America Way, 2nd Floor, Miami, FL 33132 (with Miami-Dade County, referred to collectively hereinafter as “the Port” or “Port of Miami”).

g. Miami-Dade County, 111 NW 1st St., Miami, FL, 33128 (with the Dante B. Fascell Port of Miami–Dade *aka* Miami-Dade County Seaport Department, referred to collectively hereinafter as “the Port” or “Port of Miami”).

5. All of the above-named respondents are “marine terminal operators” as defined in section 3(14) of the Act, 46 U.S.C. §40102(14).

POMTOC

6. POMTOC is the only public, multi-user cargo terminal at the Port. In consequence, the vast majority of ocean common carriers of cargo calling the Port must obtain marine terminal services from POMTOC. POMTOC holds itself out to provide such services to ocean common carriers in POMTOC's public Tariff No. 200.

7. The Port and POMTOC have entered into a Terminal Operating Agreement with respect to the POMTOC terminal. A purported copy of the Terminal Operating Agreement is appended hereto as Exhibit A.

FILED AND UNFILED POMTOC AGREEMENTS

8. POMTOC was established and purportedly operates under the authority of FMC Agreement No. 224-200616. The parties to Agreement No. 224-200616 are Continental Stevedoring, Florida Stevedoring, and P&O Ports.

9. A copy of Agreement No. 224-200616, as it is filed with the Commission, is appended hereto as Exhibit B. Agreement No. 224-200616 as filed refers to five Exhibits (A through E) that are part of the Agreement, but which are not (and on information and belief were not) filed with the Commission.

10. The body of filed Agreement No. 224-200616 is dated as of February 15, 1993. Aside from non-substantive modifications to the cover page to reflect changes in names and addresses, no amendments to Agreement No. 224-200616 have been filed with the Commission since 1993.

11. On information and belief, in or about May 1999 the parties to Agreement No. 224-200616 entered into an amended and restated agreement ("1999 Unfiled Agreement") that, according to its terms, expressly amended and superseded the agreement on file with the

Commission. The 1999 Unfiled Agreement was not filed with the Commission, and the superseded 1993 agreement remains on file. A copy of the 1999 Unfiled Agreement is appended hereto as Exhibit C.²

12. The 1999 Unfiled Agreement (p. 1) identifies that between 1994 and 1998 there were five amendments to the 1993 filed agreement. On information and belief, these amendments were not filed with the Commission and were expressly superseded by the 1999 Unfiled Agreement.

13. The 1999 Unfiled Agreement states (p. 2) that it is the sole source of the relationship among the parties and that it shall govern the parties even when inconsistent with, or different than, the provisions of any statute other than the U.S. tax code or the Florida Limited Liability Company Act.

14. The terms of the 1999 Unfiled Agreement differ substantively in a number of respects from the terms of filed Agreement No. 224-200616 which it purported to supersede. *Inter alia*, the 1999 Unfiled Agreement deleted the provision in the filed agreement that specifically states that the purpose and business of POMTOC exclude the stevedoring business of any POMTOC member or its affiliate or related entity.³

STEVEDORING AT POMTOC

15. As a "marine terminal operator" within the meaning of the Act, POMTOC provides marine terminal services to ocean common carriers whose vessels call the Port. However, POMTOC, as such, does not provide stevedoring services to these vessels. Instead,

² The 1999 Unfiled Agreement was included as an exhibit to the complaint in *Continental Stevedoring & Terminals, Inc, et al. v. P&O Ports Florida, Inc.*, Docket 2006-3238-CA-01 (Fla. Cir. Ct. 11, 2006).

³ E.g., compare Article 1.2 of Agreement No. 224-200616 with Article 3.1 of the 1999 Unfiled Agreement.

ocean common carriers using POMTOC contract separately with Port-licensed stevedores for the provision of stevedoring services.

16. POMTOC and its members have adopted policies and practices that require ocean common carriers using POMTOC to obtain stevedoring services from a POMTOC member (Florida Stevedoring) or from a joint venture owned and controlled by the other POMTOC members (Eller-ITO, which is owned and controlled by Continental Stevedoring and P&O Ports).

17. On information and belief: The terminal and stevedoring businesses at POMTOC have been and continue to be “inextricably entwined.”⁴ In addition to restricting the right to stevedore to a POMTOC member and a joint venture of the other POMTOC members, there is, *inter alia*, pervasive overlap between the senior management of POMTOC and the senior management of the stevedore companies, as well as significant overlap in the equipment used in the terminal and stevedoring businesses.

18. On information and belief, Continental Stevedoring and P&O Ports have not filed an agreement with the Commission concerning their establishment or operation of Eller-ITO.

REFUSAL TO ALLOW R.O. WHITE/CERES TO STEVEDORE AT POMTOC

19. The Port’s Tariff No. 10 provides for use of the Port’s container gantry cranes by any authorized stevedore. A current copy of Item 550 of that Tariff is appended hereto as Exhibit D.

20. In March 2005, Ceres acquired R.O. White, which holds a Port permit to perform stevedoring. Since that time, R.O. White — backed by Ceres’ resources and organization — has sought to exercise its right as a licensed stevedore to perform stevedoring services for ocean

⁴ The quotation is from the complaint in *Continental Stevedoring & Terminals, Inc., et al. v. P&O Ports Florida, Inc.*, *supra*.

common carriers that use POMTOC's terminal and that want to engage R.O. White/Ceres to perform stevedoring. R.O. White/Ceres have been supported in this regard by the ocean common carrier Nippon Yusen Kaisha of Japan ("NYK") and its wholly owned subsidiary NYK Line (North America), Inc. (also "NYK"), which enters into terminal and stevedoring contracts for NYK vessels in the United States.

21. R.O. White's/Ceres' attempts to perform stevedoring at POMTOC have been refused by POMTOC at every turn. The dispute regarding R.O. White's right to perform stevedoring at POMTOC initially arose in the context of R.O. White's nomination by NYK and Hapag-Lloyd Container Line ("Hapag") to stevedore the ships in their vessel sharing agreement ("VSA") operating between Miami and ports in South America (FMC Agreement No. 011891). Beginning no later than June 2005, NYK and Hapag repeatedly informed POMTOC and its members that they wanted to exercise their right as vessel operators to contract with R.O. White to stevedore the vessels in their VSA at the POMTOC terminal. However, POMTOC consistently refused to allow R.O. White to stevedore the NYK/Hapag vessels calling the POMTOC terminal.

22. On August 18, 2005, counsel for R.O. White/Ceres sent a letter to POMTOC and its members (with a copy to the Port), setting forth R.O. White's and Ceres' position that, unless R.O. White was allowed to stevedore the NYK/Hapag vessels calling POMTOC, the above-mentioned circumstances would give rise to numerous and ongoing violations of the Shipping Act. A copy of the August 18, 2005 letter is appended hereto as Exhibit E.

23. POMTOC responded to the August 18, 2005 letter by requesting a meeting between counsel for POMTOC and counsel for Ceres/R.O. White, which, however, did not resolve the dispute. Thereafter, counsel for R.O. White/Ceres sent a letter to counsel for

POMTOC, dated November 15, 2005, elaborating on R.O. White'/Ceres' positions. A copy of the November 15, 2005 letter is appended hereto as Exhibit F.

24. By letter of November 30, 2005, counsel for POMTOC responded to the November 15, 2005 letter from counsel for Ceres/R.O. White. A copy of the November 30, 2005 letter is appended hereto as Exhibit G. POMTOC's letter flatly rejects Ceres'/R.O. White's position and states that R.O. White is not entitled, and will not be allowed by POMTOC, to stevedore vessels using the POMTOC terminal. The position taken in POMTOC's November 30, 2005 letter is broad and unqualified, and makes clear that POMTOC will not allow R.O. White/Ceres to perform stevedoring, not only for the NYK/Hapag service, but for any vessels operated by NYK, its VSA partners, or any other ocean common carriers that use the POMTOC marine terminal.

25. Subsequent to POMTOC's November 30, 2005 letter, R.O. White/Ceres engaged in protracted discussions with the Port — including with the former, acting and new Port Directors — seeking the Port's assistance in allowing R.O. White to perform stevedoring services for vessels using POMTOC. On information and belief, POMTOC and its members were aware of the existence of these discussions. To date, however, the discussions with the Port have not resulted in a resolution.

THE INTERESTS OF R.O. WHITE'S/CERES' CORPORATE AFFILIATE, NYK

26. R.O. White/Ceres have an interest in protecting and furthering, not only their own rights, but also the rights of their corporate affiliate NYK. NYK strongly supports the efforts of R.O. White/Ceres to perform stevedoring at POMTOC and has made it clear to them that it would use R.O. White/Ceres to stevedore the NYK vessels currently calling the Port as well as other NYK vessels doing so in the future.

27. POMTOC's November 30, 2005 letter states that POMTOC controls the area within the boundaries of its terminal and that R.O. White will not be allowed access to that area to move containers between a vessel and the containers' point of rest within the terminal. However, moving the container between the vessel and a point of rest on the marine terminal is part of an ocean common carrier's transportation obligation to its shippers under the Shipping Act. An ocean common carrier has the right, by law and according to industry custom and practice, to select the stevedore that will perform that portion of its transportation obligation.

28. The ocean common carrier pays POMTOC for the use of the terminal area as the container's point of rest. Such use is part of the marine terminal services that POMTOC provides to carriers and, as such, is specifically covered by the rates in POMTOC's terminal tariff, which are paid by the carriers (including NYK) that use POMTOC for terminal services.

29. The ocean common carrier (not POMTOC) enters into a contract with a stevedore to perform stevedoring for its vessels using the POMTOC terminal.

30. NYK is an ocean common carrier with longstanding connections to the Port, and, as such, has a substantial interest in ensuring that it and its VSA partners can exercise their right to select the licensed stevedore that will perform stevedoring for their vessels at POMTOC. NYK regularly participates in VSA strings that call the Port. For example, in addition to the above-referenced NYK-Hapag vessel service (which called the Port for 12 months until it was recently redeployed), NYK is a member of the Grand Alliance — a major global alliance that operates numerous vessel services in the U.S. foreign trades and currently calls the Port with a transatlantic service that operates to Northern Europe. In addition, NYK calls the Port with two Ro/Ro vessel services that it alone operates. All of these vessels necessarily use the POMTOC

terminal, where NYK and its VSA partners continue to be denied the ability to use R.O. White/Ceres to perform stevedoring.

ACCESS TO THE POMTOC TERMINAL BY OTHER ENTITIES

31. Although refusing to allow R.O. White to move containers between the berths/cranes and the point of rest on the POMTOC terminal, POMTOC regularly allows Eller-ITO (which is not a member of POMTOC) free access to the terminal to perform that function. On information and belief, POMTOC has in the past allowed Oceanic Stevedoring Company and APM Terminals to perform stevedoring operations at the POMTOC terminal even though they were not at the time a POMTOC member or an affiliate of a POMTOC member.

32. POMTOC regularly allows truckers, without charge other than the gate charges that are paid by the ocean common carrier under POMTOC's tariff, to traverse the terminal between the gate and the place in the terminal where the container is picked up or dropped off.

THE PORT AND POMTOC

33. Under the 1994 Terminal Operating Agreement between the Port and POMTOC, *inter alia*, the Port retains the exclusive right to assign all berths and cranes at the Port; POMTOC must obtain prior Port approval for amendments to its tariff; POMTOC is required to abide by the terms of the Port's tariff, which includes a provision allowing use of the Port's gantry cranes by any authorized stevedore; POMTOC is required to abide by the terms of all federal laws, rules, and regulations; and POMTOC must obtain prior Port approval for any material change to its corporate structure or majority ownership. These provisions, among other factors, give the Port substantial influence and/or control over POMTOC's practices and policies concerning stevedoring.

34. Since POMTOC was established as the only public, multi-user cargo terminal at the Port more than 12 years ago, transportation conditions have changed dramatically at POMTOC and at the Port generally. *Inter alia*, both the number of ocean carriers using POMTOC's terminal and the number of containers handled there have greatly increased since POMTOC was established. POMTOC's website asserts that the past decade "has shown remarkable growth in numbers of customers utilizing POMTOC's terminal as well as the number of containers handled. We are now serving over 30 ocean carriers and handling over 500,000 TEU's annually."

35. This growth has not been accompanied by an increase in the number of competitors or degree of competition in stevedoring. On information and belief, four stevedores operated at POMTOC after it was created. Currently, POMTOC's policies and practices reserve to two stevedores the entire market for stevedoring at the Port's only public, multi-user cargo terminal. One of those stevedores (Florida Stevedoring) is a POMTOC member and the other (Eller-ITO) is a joint venture owned by the other POMTOC members. A POMTOC member estimated in a February 2006 court filing that Eller-ITO handles approximately 74 percent of all container moves at the Port of Miami.⁵

36. Notwithstanding its control over all berths and cranes, notwithstanding its other influence and/or control over POMTOC's practices and policies concerning stevedoring, notwithstanding the greatly changed transportation conditions since POMTOC was established, and notwithstanding attempts by ocean common carriers such as NYK to choose the Port-licensed stevedore that will stevedore their vessels at POMTOC, the Port — at least to date — has not taken action to remedy the unreasonable conditions and practices identified above.

⁵ Complaint in *Continental Stevedoring & Terminals, Inc., et al. v. P&O Ports Florida, Inc.*, *supra*.

COUNT I

37. Based on the above allegations and other facts that will be established at hearing, the parties to FMC Agreement No. 224-200616 have violated, and continue to violate, sections 5(a), 10(a)(2) and 10(a)(3) of the Act, 46 U.S.C. §§ 40302(a), 41102(b)(1) & (b)(2), by, *inter alia*,

- a. failing to file their actual agreements;
- b. operating pursuant to agreements that were required to be filed, but were not filed;
- c. operating outside and/or contrary to the terms of their filed agreement, including, *inter alia*, the provision in the filed agreement that specifically excludes from the business of POMTOC the stevedoring business of POMTOC members or their related parties; and
- d. collectively agreeing to refuse R.O. White permission to perform stevedoring at POMTOC.

COUNT II

38. Based on the above allegations and other facts that will be established at hearing, POMTOC and/or its members have violated, and continue to violate, sections 10(b)(10), 10(d)(1), 10(d)(3) and 10(d)(4) of the Act, 46 U.S.C. §§ 41104(10), 41102(c), 41106(3), & 41106(2), by, *inter alia*,

- a. using POMTOC as a device to exclude Port-licensed stevedores from competing for the business of ocean common carriers using the POMTOC terminal;
- b. precluding ocean common carriers, including NYK, from exercising their right to use R.O. White as the stevedore for their vessels using POMTOC;
- c. refusing to allow R.O. White to use its Port-granted stevedoring license to perform stevedoring services for vessels calling POMTOC;

- d. conditioning an ocean common carrier's use of the only public, multi-user cargo terminal at the Port on use of a POMTOC member or its related party as stevedore; and
- e. denying R.O. White access to the POMTOC terminal while allowing access to other entities for the same or similar purposes.

COUNT III

39. Based on the above allegations and other facts that will be established at hearing, the Port of Miami has violated, and continues to violate, sections 10(b)(10), 10(d)(1), 10(d)(3) and 10(d)(4) of the Act, 46 U.S.C. §§ 46 U.S.C. 41104(10), 41102(c), 41106(3), & 41106(2) by, *inter alia*,

- a. failing to prevent the other respondents from engaging in the unlawful conduct alleged in Counts I and II above;
- b. failing to ensure access by qualified stevedores to the only public, multi-user cargo terminal at the Port; and
- c. failing to evaluate, after more than a decade during which transportation conditions at the Port and at POMTOC greatly changed, whether there is any justification for the continuation of a monopoly public, multi-user cargo terminal at the Port, which has been used to deny such public users a choice of licensed stevedores.


Statement concerning ADR procedures. As reflected in paragraphs 22-25 above, there has been extensive discussion of the issues raised in the Complaint between Complainants and Respondents and between their counsel. In light of those discussions, informal dispute resolution procedures have not been used prior to the filing of the Complaint; nor have Complainants consulted with the Commission Dispute Resolution Specialist about utilizing alternative dispute resolution under the Commission's ADR program.

WHEREFORE, Complainants pray that Respondents be required to answer the charges herein; and that after due hearing, an order be made commanding said Respondents (and each of them) to cease and desist from the aforesaid violations; to establish and put in force such practices and policies as the Commission determines to be lawful and reasonable; to pay to Complainants reparations for the unlawful conduct above described in amounts to be determined after hearing, with interest and attorney's fees; and to make such other and further order or orders as the Commission determines to be proper in the premises.


Complainants designate Washington, D.C. as the place at which hearing is desired.

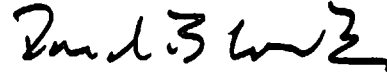
Dated at New Jersey, this 9th day of July, 2007.

R. O. White & Company, Inc.
2550 Eisenhower Blvd.
Suite 308
Fort Lauderdale, FL 33316

By: 
Thomas J. Simmers
President and CEO

Ceres Marine Terminals, Inc.
1200 Harbor Blvd.
8th Floor
Weehawken, NJ 07087

By: 
Thomas J. Simmers
President and CEO



Robert T. Basseches
David B. Cook
Richard L. Matheny, III
Eric C. Jeffrey
Goodwin Procter, LLP
901 New York Avenue, NW
Washington, DC 20001
(202) 346-4000

Attorneys for Complainants R. O. White &
Company, Inc. and Ceres Marine Terminals,
Inc.

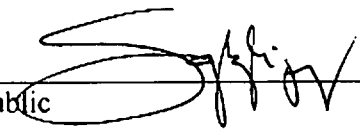
VERIFICATION

STATE OF New Jersey)
) ss:
 COUNTY OF Hudson)

Thomas J. Simmers, being first duly sworn on oath deposes and says that he is President of Ceres Marine Terminals, Inc.; that he signed the foregoing First Amended Complaint; that he has read the Complaint and the facts stated therein, upon information personally known to him and received from others, he believes to be true.

Subscribed and sworn to before me, a notary public in and for the State of
New Jersey, County of Hudson, this 9th day of July, 2007.

[SEAL]


 Notary Public

SUSAN AGLIPAY
 NOTARY PUBLIC OF NEW JERSEY
 MY COMMISSION EXPIRES FEB. 6, 2008

My Commission Expires: February 6, 2008

**BEFORE THE
FEDERAL MARITIME COMMISSION**

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Complainants)

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PORT OF MIAMI TERMINAL OPERATING)
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FLORIDA STEVEDORING, INC.,)
P&O PORTS NORTH AMERICA, INC.,)
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ELLER-ITO STEVEDORING COMPANY)
L.L.C.,)
DANTE B. FASCELL PORT OF MIAMI -)
DADE, *aka* MIAMI-DADE COUNTY)
SEAPORT DEPARTMENT,)
MIAMI-DADE COUNTY)

Respondents.)

COMPLAINANTS' INITIAL DISCOVERY REQUESTS
TO MIAMI-DADE COUNTY

I.

DEFINITIONS

- A. "1999 Regulations" means the 1999 Amended and Restated Regulations of Port of Miami Terminal Operating Company, L.L.C., or any portion(s) thereof, which is included in Exhibit C to the Complaint in this Docket.

- B. **“And” or “or”** shall be construed in the conjunctive or disjunctive as necessary to make the discovery request inclusive rather than exclusive.
- C. The words **“any”** and **“all”** shall be construed so as to make the discovery request inclusive rather than exclusive.
- D. The term **“communication”** means any oral or written contact, direct or indirect, including, but not limited to, conversations, meetings, telephone calls, letters, e-mails, or transmittal of documents.
- E. **“Document(s)”** shall include, without limitation, the full range of things discoverable under the Federal Rules of Civil Procedure.
- F. **“FMC”** refers to the Federal Maritime Commission and includes the Chairman of the FMC, any FMC Commissioner, and any official of the FMC or person on the staff of the FMC.
- G. **“FMC Agreement No. 224-200616”** means the Operating Agreement, or any portion(s) thereof, which is included in Exhibit B to the Complaint in this Docket, including all amendments, exhibits, and supplements thereto (whether or not filed with the FMC).
- H. Whenever in these discovery requests there is a request to **“identify”** a document, set forth a description of the document, the names of the sender(s), recipient(s), person(s) who received copy(ies), date, subject matter, and any unique identification number that has been assigned to the document.
- I. The words **“include”** and **“including”** shall be construed to mean without limitation.

- J. **“POMTOC”** and **“the Port”** have the meanings assigned to them in paragraph 4 of the Complaint.
- K. **“Referring or relating to”** and variants of that phrase, as used in connection with a document, shall include referencing, describing, mentioning, evidencing, or comprising.

II.

INSTRUCTIONS

These discovery requests are addressed individually to each Respondent named in the Complaint, and are to be answered individually by each Respondent to the extent that the Respondent has responsive information or documents in its possession, custody, or control. If a particular Respondent has no responsive information or documents with respect to a particular discovery request, its response to the discovery request should so state.

Any document as to which a claim of privilege is or will be asserted should be identified by author, recipient, description (*e.g.*, letter, memorandum, e-mail, recording, etc.), title (if any), date, general subject matter, present custodian, and a statement of the ground for the claim of privilege should be set forth.

If any of the documents cannot be produced in full, produce to the extent possible, specifying the reasons for the inability to produce the remainder.

The requests herein are continuing and impose the duty seasonably to supplement responses pursuant to 46 C.F.R. § 502.201(j).

III.

INTERROGATORIES

1. With respect to FMC Agreement No. 224-200616 as defined above:

a. Identify FMC Agreement No. 224-200616 in the form in which it was originally filed with the FMC pursuant to the Shipping Act of 1984 and all other documents that were included in or related to the original filing, including prior drafts of the Agreement or any portions thereof.

b. Identify all subsequent filings with or submissions to the FMC referring or relating to the Agreement, including any amendments made to the Agreement subsequent its original filing, and all documents that were included in or related to such filings or submissions.

c. Identify Exhibits A through E listed on the page headed EXHIBITS in FMC Agreement No. 224-200616.

d. Identify any other exhibits, appendices, or attachments that were part of, or referred to in, FMC Agreement No. 224-200616 as it existed at any time.

e. Identify all documents covered by the following phrase in Section 9.1 of the FMC Agreement No. 224-200616: "the Exhibits and Schedules hereto, or agreements provided for herein, which constitute a part hereof, and the other documents delivered pursuant hereto."

f. State whether, and if so when, each document identified in response to the preceding subparts (c)–(e) of this paragraph was filed with the FMC pursuant to the Shipping Act of 1984, and identify all documents that were included in or related to any such filings.

g. Identify all documents referring or relating to Article 1.2 of FMC Agreement No. 224-200616, or any draft thereof or amendment thereto, or to the section of any prior or subsequent draft or version of such Agreement concerning the purpose or business of POMTOC.

h. Except to the extent specifically identified pursuant to the above, identify all communications between POMTOC or any of its current or former members (or the attorney or agent of POMTOC or any of its current or former members) and the FMC referring or relating to FMC Agreement No. 224-200616.

2. With respect to the 1999 Regulations as defined above:

a. Identify all documents referenced in items (i) through (viii) of paragraph B of the “Recitals” on page 1 of the 1999 Regulations.

b. State whether, and if so when, each document identified in response to subpart (a) of this paragraph was filed with the FMC pursuant to the Shipping Act of 1984, and identify all documents that were included in or related to any such filings.

c. Identify all documents created on or prior to the later of May 25, 1999, or the latest date on which the 1999 Regulations were actually signed by any signatory, referring or relating to the 1999 Regulations, including all prior drafts of all or any portion of the 1999 Regulations.

d. Identify all communications on or prior to the later of May 25, 1999, or the latest date on which the 1999 Regulations were actually signed by any signatory, involving at least one current or former member of POMTOC and referring or relating to the 1999 Regulations or any prior or subsequent draft or version of the 1999 Regulations.

e. Except as identified above, identify all documents (regardless of date) referring or relating to (i) Section 1.2 of the 1999 Regulations, or the section of any prior or subsequent draft or version of such Agreement concerning the effect or significance of the Regulations regarding the relationship among the parties; (ii) Section 3.1 of the 1999 Regulations, or the section of any prior or subsequent draft or version of such Agreement concerning the purpose or business of POMTOC; or (iii) Section 5.6 of the 1999 Regulations, or the section of any prior or subsequent draft or version of such Agreement concerning new members of POMTOC.

f. Were the 1999 Regulations, or any draft or portion thereof, provided to the Port by POMTOC or any current or former POMTOC member at any time? If so, identify the document(s) provided and all communications between POMTOC or any current or former POMTOC member and the Port concerning the documents provided.

g. Is it your position that the 1999 Regulations, in whole or part, were not required to be filed with the FMC under the Shipping Act of 1984? (i) If yes, explain in detail the basis for your position, and identify all documents referring to or supporting your position or otherwise referring to the question or possibility of filing the 1999 Regulations in whole or part. (ii) Identify any such filing and all documents relating thereto.

h. Identify all documents and communications between any Respondent or any former member of POMTOC (or the attorney or agent of either) and the FMC concerning the 1999 Regulations or any draft thereof.

i. Were the 1999 regulations subsequently amended or supplemented? If yes, identify all such amendments or supplements and all documents referring or relating thereto.

3. Was any filing made with the FMC concerning the establishment or operation of Eller-ITO Stevedoring Company, L.L.C.? Identify any such filing(s) and any communications by or on behalf of any Respondent with the FMC relating to whether such a filing was necessary.

4. Identify all written agreements, leases, memoranda of understanding, or other arrangements between the Port and POMTOC concerning the respective rights, obligations, or relationships of the Port and POMTOC with respect to POMTOC or the POMTOC terminal, including the Agreement Between Port of Miami Terminal Operating Company (POMTOC) And Metropolitan Dade County Seaport Department, entered into as of September 15, 1994, which is Exhibit A to the Complaint, and all drafts or versions of or amendments to any such documents.

5. Identify all written agreements, leases, memoranda of understanding, or other arrangements between the Port and Maersk, Inc., AP-Moller, or APM Terminals (or any affiliate) concerning the respective rights, obligations or relationships of the Port and one or more of those entities with respect to the marine terminal facility operated by one or more of them, and any drafts or versions of or amendments to any such document.

6. Identify all written agreements, leases, memoranda of understanding, or other arrangements between the Port and Seaboard Marine, Ltd. (or any of its affiliates)

concerning the respective rights, obligations or relationships of the Port and Seaboard Marine with respect to the marine terminal facility operated by Seaboard Marine, and all amendments to any such document.

7. Identify all entities or persons who hold a currently effective stevedoring permit issued by the Port.

8. Identify the Port's tariff(s) or marine terminal operator schedule(s) as they existed on January 1, 2004 and all subsequent changes thereto.

9. Identify POMTOC's tariff(s) or marine terminal operator schedule(s) as they existed on January 1, 2004 and all subsequent changes thereto.

10. Identify any document created, modified, or received on or after January 1, 2005 by one or more Respondents that refers, directly or indirectly, to one or more of the following:

a. Ceres Marine Terminals, Inc., or any affiliated company in the business of providing marine terminal or stevedoring services on the East or Gulf coasts of North America;

b. R.O. White & Company, Inc.;

c. Any of the following individuals

Bruce Cashon
Thomas Simmers
James White
R.O. White

11. Identify all agendas or minutes, and any drafts thereof, relating to any meeting of the POMTOC Board of Managers or POMTOC Members on or after January 1, 2004.

12. Identify all documents submitted by any Respondent to, or received by any Respondent from, the FMC on or after January 1, 2004 referring or relating to POMTOC.

13. Identify all editions of the Port of Miami Official Directory (or any similar document with a different title) for the years 1992 to present.

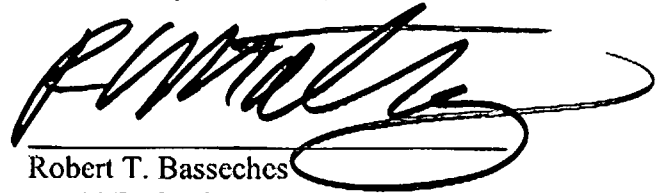
14. Have any documents requested to be identified above been destroyed since January 1, 2005? If so, then for each such document (or type or category of document), identify the document (or type or category), provide a full explanation of the circumstances of its destruction, and identify any communication or document referring or relating to such destruction or possible destruction.

IV.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Produce complete and legible copies of, or make available for inspection and copying, all documents requested to be identified pursuant to the above interrogatories. For each such document, identify the specific interrogatory (including subpart) to which it is responsive.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Basseches', with a large, stylized flourish extending from the end of the signature.

Robert T. Basseches

David B. Cook

Richard L. Matheny, III

Eric C. Jeffrey

Goodwin Procter LLP

901 New York Avenue, N.W.

Washington, DC 20001

202-346-4000

Attorneys for Complainants R.O.

White & Company, Inc. and Ceres

Marine Terminals, Inc.

July 11, 2007

CERTIFICATE OF SERVICE

RECEIVED

07 JUL 11 PM 3:42

OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

I hereby certify that on this 11th day of July, 2007, a copy of the foregoing First Amended Complaint and Complainants' Initial Discovery Requests to Miami-Dade County were served on the following entities and persons via first-class mail (duplicate copy to counsel by e-mail):

P&O Ports North America, Inc.
99 Wood Avenue South, 8th Floor
Iselin, NJ 08830

P&O Ports Florida, Inc.
1007 N. America Way, Suite 310
Miami, FL 33132

Neal M. Mayer
Paul D. Coleman
Hoppel, Mayer & Coleman
1050 Connecticut Avenue, N. W.
10th Floor
Washington, DC 20006
nmayer@hmc-law.com
pcoleman@hmc-law.com

Counsel for P&O Ports North America, Inc. and P&O Ports Florida, Inc.

* * * * *

Florida Stevedoring, Inc.
125 N.E. 9th Street
Miami, FL 33101

C. Jonathan Benner
Matthew J. Thomas
Virginia Brunelli Balestrieri
Troutman Sanders LLP
401 9th Street, N.W., Suite 1000
Washington, DC 20004
jonathan.benner@troutmansanders.com
matthew.thomas@troutmansanders.com
Virginia.BrunelliBalestrieri@troutmansanders.com

Counsel for POMTOC and Florida Stevedoring, Inc.

* * * * *

Stephen B. Bass
Miami-Dade County Attorney's Office
111 Northwest First Street, Suite 2810
Miami, Florida 33128
sbb2@miamidade.gov

Counsel for Dante B. Fascell of Miami Dade, a.k.a. Miami-Dade County Seaport Department

* * * * *

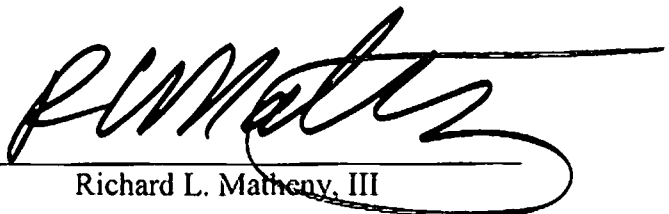
Continental Stevedoring & Terminals, Inc.
c/o Joseph A. Muldoon, III, President
1850 Eller Drive
Suite 403
Fort Lauderdale, FL 33316

James B. Ellis II
Joseph O. Click
Blank Rome LLP
600 New Hampshire Ave., N.W.
Washington, DC 20037
Ellis-J@BlankRome.com
Click@BlankRome.com

Counsel for Continental Stevedoring & Terminals, Inc.

COURTESY COPY TO (by hand delivery):

Honorable Clay G. Guthridge
Administrative Law Judge
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, DC 20573



Richard L. Matheny, III

RECEIVED

07 JUL 11 PM 3:42

FILED IN THE SECRETARY
FEDERAL MARITIME COMM

July 11, 2007

BY HAND DELIVERY

The Honorable Bryant L. VanBrakle
Secretary of Federal Maritime Commission
800 North Capitol St.
Room 1046
Washington, D.C. 20573

Re: R.O. White & Company, Inc. et al. v. Port of Miami Terminal Operating Company, L.L.C. et al., FMC Docket No. 06-11

Dear Mr. VanBrakle:

Enclosed for filing per order of Judge Guthridge¹ are an original and 15 copies of the verified First Amended Complaint in the above-referenced proceeding. Pursuant to FMC Rule 113(b), to which Judge Guthridge called our attention (p. 31), Complainants will serve the First Amended Complaint on Miami-Dade County (along with initial discovery requests) and will file the proof of service as soon as we obtain it. As Judge Guthridge requested that you also serve the First Amended Complaint on Miami-Dade County in a manner permitted by the Administrative Procedure Act, the Shipping Act, and 46 C.F.R. § 502.70 and 46 C.F.R. Subpart H, we enclose a sixteenth copy for that purpose along with Complainant's Initial Discovery Requests upon Miami-Dade County.

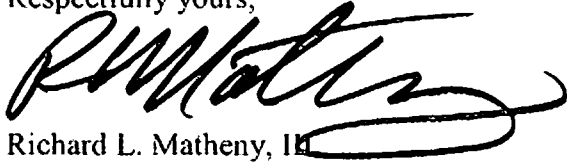
As ordered by Judge Guthridge, Complainants have also served the First Amended Complaint and Complainants' Initial Discovery Requests to Miami-Dade County on respondents Port of Miami Terminal Operating Company, LLC; Continental Stevedoring & Terminals, Inc.; Florida Stevedoring, Inc.; P&O Ports North America, Inc.; P&O Ports Florida, Inc.; and Dante B. Fascell Port of Miami-Dade, a.k.a. Miami-Dade County Seaport Department. A certificate reflecting service on these parties is enclosed.

¹ See Memorandum and Order on Pending Motions and Petition, dated July 2, 2007, p. 39.

GOODWIN | PROCTER

The Honorable Bryant L. VanBrakle
July 11, 2007
Page 2

Respectfully yours,

A handwritten signature in black ink, appearing to read "R. Matheny, III", with a large, stylized flourish at the end.

Richard L. Matheny, III

Enclosures

cc: All counsel of record
Honorable Clay G. Guthridge (courtesy copy)